

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Louisville Gas & Electric Company and  
Kentucky Utilities Company

Docket No. ER02-2560-002

v.

East Kentucky Power Cooperative, Inc.

ORDER AFFIRMING IN PART AND REVERSING IN PART INITIAL DECISION  
AND ESTABLISHING FURTHER HEARING PROCEDURES

(Issued December 22, 2004)

1. In this order, the Commission affirms in part and reverses in part an Initial Decision<sup>1</sup> resolving a proposal to modify the rates under an Interconnection Agreement and a Transmission Agreement (together, the Agreements) between Louisville Gas & Electric Company (Louisville Gas), Kentucky Utilities Company (Kentucky Utilities) and East Kentucky Power Cooperative, Inc. (East Kentucky). This order benefits customers because it assures that the rates, terms and conditions of the Agreements are just and reasonable.

**I. Background**

2. Kentucky Utilities and East Kentucky are parties to the Interconnection Agreement, which allows each to use the other's transmission system to avoid costly duplication of facilities. In May 1995, Kentucky Utilities and East Kentucky amended the Interconnection Agreement. The 1995 Amendment fixed the charges for service for so-called base load amounts for an initial ten-year period.<sup>2</sup> In February 1995, Kentucky

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<sup>1</sup> *Louisville Gas & Electric Company, Kentucky Utilities Company*, 106 FERC ¶ 63,039 (2004) (Initial Decision).

<sup>2</sup> The 1995 Amendment was accepted by letter order. *See Kentucky Utilities Company*, 72 FERC ¶ 61,097 (1995).

Utilities and East Kentucky entered into the Transmission Agreement for transmission service to the Gallatin Steel Company (Gallatin). The Transmission Agreement was also designed to avoid the cost of duplicate facilities.

3. After the Agreements were initially negotiated, Kentucky Utilities merged with Louisville Gas. Louisville Gas/Kentucky Utilities are transmission owning members of the Midwest Independent Transmission System Operator (Midwest ISO), but the Agreements are “grandfathered agreements” under the Midwest ISO Open Access Transmission Tariff (OATT), i.e., transmission service continues to be provided under the Agreements.

4. In September 2002, Louisville Gas/Kentucky Utilities filed with the Commission a proposal to restructure the Agreements to: (1) increase the rates paid by East Kentucky to the same rate Louisville Gas/Kentucky Utilities established pursuant to Attachment O of the Midwest ISO OATT as their zonal rate under the Midwest ISO OATT; (2) eliminate the reciprocal provision of ancillary services and add charges for ancillary services equal to the rates that Louisville Gas/Kentucky Utilities charge for ancillary services for their pricing zone under the Midwest ISO OATT, and pass through the costs that Louisville Gas/Kentucky Utilities incur under Schedule 10 of the Midwest ISO OATT (the Midwest ISO administrative cost adder); and (3) allow the automatic pass-through under the Agreements of charges under any future schedules that are added to the Midwest ISO OATT.

5. Louisville Gas/Kentucky Utilities essentially sought to “adjust the rates for certain transmission services provided to [East Kentucky] under the Agreements so that the charges reflect the corresponding charges that [East Kentucky] would pay if it were a transmission customer of the Midwest ISO.”<sup>3</sup> In amending the Agreements, Louisville Gas/Kentucky Utilities sought to “eliminate the under-recovery of their transmission revenue requirement, including the Midwest ISO charges that they are assessed for service provided under the Agreements.”<sup>4</sup>

6. The Commission accepted and suspended Louisville Gas/Kentucky Utilities’ proposed rate changes and set the proposed rates for hearing.<sup>5</sup>

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<sup>3</sup> *Louisville Gas & Electric Company, Kentucky Utilities Company*, 101 FERC ¶ 61,182 (2002).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

## II. Initial Decision

7. The Initial Decision addressed eight issues: (1) whether Louisville Gas/Kentucky Utilities may charge for ancillary services; (2) whether Louisville Gas/Kentucky Utilities may add the Schedule 10 adder to the rates in the Agreements; (3) whether Louisville Gas/Kentucky Utilities may include in the rates under the Agreements the 50 basis point return on equity incentive adder approved for use under the Midwest ISO OATT; (4) whether East Kentucky should be charged the Midwest ISO Regional Through and Out Rate (Through & Out Rate) when it takes service under the Midwest ISO OATT to the border of the Louisville Gas/Kentucky Utilities system to import power to serve the load served under the Agreements; (5) whether Louisville Gas/Kentucky Utilities may include the cost of certain facilities in Virginia in the transmission rate; (6) whether Louisville Gas/Kentucky Utilities may automatically pass through under the Agreements charges under any future schedules that are added to the Midwest ISO OATT without making a new filing under section 205 of the Federal Power Act (FPA); (7) whether Louisville Gas/Kentucky Utilities' rates under Schedule 9 of the Midwest ISO OATT are just and reasonable for network service provided under the terms of the Agreements; and (8) what rates Louisville Gas/Kentucky Utilities should pay to East Kentucky under the Interconnection Agreement for service provided by East Kentucky.

8. The Presiding Judge found that: (1) Louisville Gas/Kentucky Utilities may not charge for ancillary services under the Agreements, other than Load Following and Load Regulation Service on loads that are not dynamically scheduled; (2) Louisville Gas/Kentucky Utilities may pass through the Midwest ISO Schedule 10 adder only for loads in excess of the base load amounts in the Agreements; (3) Louisville Gas/Kentucky Utilities may include the 50 basis point adder in rates for loads in excess of the base load amounts in the Agreements; (4) East Kentucky should be charged the Through & Out Rate only to import power to serve the base load amounts under the Agreements, not to serve any loads for which the Midwest ISO OATT rate has been adopted for service under the Agreements; (5) Louisville Gas/Kentucky Utilities must eliminate the cost of the Virginia facilities from the transmission rates it charges under the Agreements; (6) Louisville Gas/Kentucky Utilities may not automatically pass through under the Agreements charges under any future schedules that are added to the Midwest ISO OATT but instead must make a new filing under section 205 of the FPA; (7) Louisville Gas/Kentucky Utilities may charge the Midwest ISO Schedule 9 rates for network service only for loads in excess of the base load amounts in the Agreements; and (8) Louisville Gas/Kentucky Utilities should be charged the rates in East Kentucky's OATT for service they take from East Kentucky in excess of the base load amounts in the Agreements.

### **III. Discussion**

9. After reviewing the record, the Initial Decision, and the briefs, we affirm, without further discussion, the Presiding Judge's findings in the Initial Decision, except for findings (1), (4), and (8) above, which we will discuss more fully below.

#### **A. Ancillary Services**

##### **1. The Presiding Judge's Findings**

10. The Presiding Judge agreed with East Kentucky's argument that there should be no separate charges for most ancillary services because the Interconnection Agreement fixed the charges for "area load service" for base load amounts and "area load service" includes more than just basic transmission service. He further found that this broad phrase was intended to continue the parties' long-standing practice of reciprocally providing each other with ancillary services at no charge, except for Load Following and Load Regulation Service for the 2 MW of untelemetered load specifically addressed in the Interconnection Agreement.

11. The Presiding Judge was also persuaded by Trial Staff's argument that the charge for base load service in the Interconnection Agreement already covers most ancillary services. The parties entered into the Interconnection Agreement in 1995, before Order No. 888 was issued, and at the time, charges for ancillary services were generally not unbundled from the charge for basic transmission service. Therefore, he found that the charge for base load amounts spelled out in section 8.03 of the Interconnection Agreement was intended to cover all ancillary services except for Load Following and Load Regulation Service for the 2 MW of load that is not dynamically scheduled.

12. The Presiding Judge also found that Louisville Gas/Kentucky Utilities' proposal to charge for particular ancillary services is contrary to the long-standing arrangement for reciprocal provision of ancillary services contained in the original Agreements. He found that because of dynamic scheduling, all but 2 MW of East Kentucky's load is dynamically scheduled back into its own control area, where East Kentucky performs "the bulk, if not all, of the ancillary services covered by Schedules 1, 3, 5, and 6 on that load."<sup>6</sup> Because each party is providing the bulk of these ancillary services for its own load served on the other's system due to dynamic scheduling, he found that there is no justification to add charges for these ancillary services.

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<sup>6</sup> *Id.* at P 46.

13. The Presiding Judge found that Schedule 2 service, Reactive Supply and Voltage Control from Generation Sources, cannot be self-provided through dynamic scheduling since, in this case, only Louisville Gas/Kentucky Utilities have generation close enough to East Kentucky's load to perform this service. However, he found that Schedule 2 service had not been treated separately from other ancillary services in the Agreements, but was provided on a reciprocal basis by the parties. The Presiding Judge found that which party ends up with most of the costs under the reciprocal arrangements cannot be determined on the record and that Louisville Gas/Kentucky Utilities cannot justify its proposal to charge for Schedule 2 service absent a demonstration that they incur substantially more costs than East Kentucky on the ancillary services overall because of the costs of that service.<sup>7</sup>

## **2. Louisville Gas/Kentucky Utilities' Brief on Exceptions**

14. Louisville Gas/Kentucky Utilities claim that the Presiding Judge erred on this issue. They argue that the fixed rate for service for base load amounts is only for "transmission service" and that the Interconnection Agreement does not restrict Louisville Gas/Kentucky Utilities' right to propose changes to the compensation provisions for ancillary services for base load amounts.

15. Finally, Louisville Gas/Kentucky Utilities argue that the Presiding Judge erred in deciding that they failed to justify charging East Kentucky for ancillary services for load in excess of base load amounts because of the reciprocal provision of ancillary services and because the use of dynamic scheduling between Louisville Gas/Kentucky Utilities and East Kentucky. Louisville Gas/Kentucky Utilities argue that the reciprocal provision of ancillary services under the Interconnection Agreement does not restrict their right to propose changes to the rates, terms and conditions of service above the base load amounts. They further argue that while they do not seek to modify the reciprocal provision of ancillary services under the Interconnection Agreement, the reciprocal provision of those services is separate from the compensation for those services.

16. With respect to the Presiding Judge's finding that East Kentucky can self-provide Schedule 1 service, Louisville Gas/Kentucky Utilities cite to Order Nos. 888 and 888-A, where the Commission found that transmission providers that operate control areas are uniquely positioned to provide Schedule 1 service and required that, even in the case of dynamic scheduling, transmission providers provide Schedule 1 service and transmission customers must take Schedule 1 service from their transmission providers.<sup>8</sup> Therefore, Louisville Gas/Kentucky Utilities argue that the Presiding Judge's reasoning failed to follow Commission precedent with regard to Schedule 1 service.

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<sup>7</sup> *Id.* at P 50.

<sup>8</sup> Louisville Gas/Kentucky Utilities Briefs on Exceptions at 34-35.

### 3. **East Kentucky, Gallatin and Trial Staff's Briefs Opposing Exceptions**

17. East Kentucky opposes Louisville Gas/Kentucky Utilities' arguments, stating that the parties agreed to provide ancillary services on a reciprocal basis, that this intention was memorialized in the Interconnection Agreement, and that Louisville Gas/Kentucky Utilities' proposal to seek compensation for ancillary services is inconsistent with the reciprocal provisions in the Interconnection Agreement. East Kentucky argues that Louisville Gas/Kentucky Utilities have provided no evidentiary support for their argument that the ancillary services were not intended to be part of the transmission service.

18. Finally, East Kentucky opposes Louisville Gas/Kentucky Utilities' argument that the Presiding Judge failed to adhere to Order No. 888. East Kentucky argues that under Order No. 888 and later orders, the ancillary services prescribed by Order No. 888 are not required to be imported into grandfathered agreements, especially when those agreements do not provide compensation for such services. In addition, East Kentucky argues that the Midwest ISO OATT itself recognizes that the ancillary service provisions of the Midwest ISO OATT are not required to be included in grandfathered agreements.

19. Gallatin largely adopts the arguments that East Kentucky makes on this issue.

20. Commission Trial Staff echoes East Kentucky's arguments on the ancillary services issue but adds that while East Kentucky is the control area for the dynamically scheduled load under both the Interconnection Agreement and the Transmission Agreement, Louisville Gas/Kentucky Utilities does not provide East Kentucky with Schedule 1 service on dynamically scheduled loads. Therefore, Trial Staff argues, Louisville Gas/Kentucky Utilities may not charge East Kentucky for Schedule 1 service on dynamically scheduled loads.

### 4. **Commission Determination**

21. The Commission agrees with the Presiding Judge that Louisville Gas/Kentucky Utilities cannot charge for ancillary services for base load amounts of transmission service (except for Load Following and Load Regulation Service for which separately stated rates already exist for load that is not dynamically scheduled).

22. The Interconnection Agreement in section 15.02(c) states that:

[t]he charges for area load service for base load amounts as defined in section 8.03 ..., are fixed for the initial ten year term of this Agreement. It is the intent of the Parties to this Agreement to eliminate during the ten year initial term, solely with respect to said charges for area load service for base

load amounts, [Kentucky Utilities'] right to make changes in said rates by making unilateral filings with the FERC pursuant to Section 205 of the [FPA] and [East Kentucky's] right to seek modification of such rates pursuant to section 206 of the [FPA] ... . As to all other rates, terms and conditions of service, or other provisions of this Agreement including rates for increases in service above base load amounts, which are subject to [Kentucky Utilities'] right of unilateral filing under section 205 of the [FPA], [East Kentucky] shall have the right to request modifications under section 206 of the [FPA] on the basis that they are unjust, unreasonable, unduly discriminatory, or preferential under the [FPA] or otherwise unlawful.<sup>9</sup>

23. The Commission agrees with the Presiding Judge's finding that the Interconnection Agreement prevents Louisville Gas/Kentucky Utilities from charging East Kentucky for ancillary services associated with transmission up to the base load amounts.

24. The Commission is not persuaded by Louisville Gas/Kentucky Utilities' argument that section 15.02(c) only applies to "transmission charges" and that that does not include ancillary services. To the contrary, the Commission is persuaded by the arguments that the Interconnection Agreement was executed before the issuance of Order No. 888 and that, before Order No. 888, costs associated with ancillary services were generally reflected in the basic "transmission charge." Contrary to this prevailing practice, the parties clearly specified a separate charge for Load Following and Load Regulation Service for load that is not dynamically scheduled. Because Load Following and Load Regulation Service for a portion of its load that is not dynamically scheduled is self-provided by East Kentucky, it makes sense that the charge for this service was separately stated and only applied to the portion of East Kentucky's base load for which Louisville Gas/Kentucky Utilities provide this service. In contrast, Schedule 1 and Schedule 2 service cannot be self-provided and must be provided by Louisville Gas/Kentucky Utilities for all load for which they provide transmission service to East Kentucky. Thus, there was no reason to deviate from the prevailing practice of including ancillary service costs in the basic transmission charge and separately state a rate for those services.

25. The Commission disagrees, however, with the Presiding Judge's finding that, under the terms of the Agreements, Louisville Gas/Kentucky Utilities cannot charge East Kentucky a separate rate for ancillary services above base load amounts. Section 15.02(c) of the Interconnection Agreement provides that "[t]he charges for area *base load amounts*... are fixed for the initial ten year term of this Agreement" and "[i]t is

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<sup>9</sup> *Redlined Copy of the Interconnection Agreement and Supplement No. 9 (entered into on June 26, 1998)*, LG&E/KU Exhibit No. 2.

the intent of the Parties to this Agreement to eliminate during the ten year initial term, *solely with respect to said charges for area load service for base load amounts [Louisville Gas/Kentucky Utilities'] right to make changes in said rates ...As to all other rates, terms and conditions of service, or other provisions of this Agreement including rates for increases in service above base load amounts*, which are subject to Louisville Gas/Kentucky Utilities' right of unilateral filing under section 205 of the [FPA]..."<sup>10</sup> This language provides Louisville Gas/Kentucky Utilities the right to unilaterally file under section 205 to modify the *rates, terms and conditions* of service above base load amounts; Louisville Gas/Kentucky Utilities may charge East Kentucky a separate rate for ancillary services above the base load amounts. The fact that the contract may have historically provided for ancillary services for service above base load amounts on a "return in kind" or exchange basis does not dictate that that practice must continue. Under Louisville Gas/Kentucky Utilities' proposal, each party will charge the other for all of the ancillary services that it provides the other. If one party incurs substantially more costs for the ancillary services that it provides the other, it will receive compensation for the difference. There is no need for Louisville Gas/Kentucky Utilities to show which party incurs more costs in order to find the proposal just and reasonable, as the Presiding Judge suggests.

26. In sum, after review of the record, the Initial Decision, and the parties' briefs, the Commission affirms the Presiding Judge's findings with respect to prohibiting Louisville Gas/Kentucky Utilities from charging East Kentucky a separate rate for ancillary services up to the base load amounts, but rejects the Presiding Judge's findings regarding Louisville Gas/Kentucky Utilities' right to charge East Kentucky for ancillary services above the base load amounts.

27. The Commission also disagrees with the Presiding Judge's finding that East Kentucky should not be charged for Schedule 1 service because it self-provides that service for its dynamically scheduled load. In Order No. 888, the Commission required that the transmission provider that operates a control area offer, and that the transmission customer must take and pay for, Schedule 1 service.<sup>11</sup> In Order No. 888-A, the Commission clarified that these requirements do not change when transmission service is taken for load that is dynamically scheduled and that, when load is dynamically scheduled from one control area to another, both control areas must provide Schedule 1 service.<sup>12</sup> By dynamically scheduling its load on the Louisville Gas/Kentucky Utilities system to the East Kentucky control area, East Kentucky will be able to match its generation with its load on a moment to moment basis, thus enabling it to self-provide

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<sup>10</sup> *Redlined Copy of the Interconnection Agreement and Supplement No. 9 (entered into on June 26, 1998) section 15.02(c)*, LG&E/KU Exhibit No. 2 (emphasis added).

<sup>11</sup> Order No. 888 at 31,715-16

<sup>12</sup> Order No. 888-A at 30,235-36.

load regulation, imbalance and reserve services, i.e., Schedules 3, 4, 5 and 6. However, Louisville Gas/Kentucky Utilities must monitor their transmission system, dispatch their transmission system, and direct the redispatch of generation resources, when necessary, to ensure that thermal and stability limits are not exceeded on the transmission system. This service, which Schedule 1 service includes, is necessary to support the transmission service that Louisville Gas/Kentucky Utilities provide, and it cannot be self-provided by East Kentucky through dynamic scheduling.

28. Further, East Kentucky and Gallatin and Trial Staff's argument that it is inconsistent with Order No. 888 and the Midwest ISO OATT to include charges for ancillary services in the Agreements is misplaced. In Order No. 888, the Commission did not generically abrogate existing transmission contracts and thus did not apply the requirements of that rule to existing transmission contracts.<sup>13</sup> However, parties to those contracts are free to seek modification to the contracts on a case by case basis consistent with their rights under those contracts and the FPA. This is what Louisville Gas/Kentucky Utilities have done. Likewise, the provisions for grandfathered agreements in the Midwest ISO OATT simply provided that service would continue to be provided under these agreements and that they were not modified by the Midwest ISO OATT. However, parties to those contracts were free to seek modification to those contracts on a case by case basis consistent with their rights under those contracts and the FPA, as Louisville Gas/Kentucky Utilities have done.

## **B. Regional Through and Out Rates**

### **1. The Presiding Judge's Findings**

29. The Presiding Judge explained that when East Kentucky imports energy from Midwest ISO transmission owners other than Louisville Gas/Kentucky Utilities to serve loads under the Agreements, it currently pays the Through & Out Rate in addition to the charges under the Agreements, and, thus, is subjected to rate pancaking. The Presiding Judge found that it would be unfair, discriminatory, and duplicative for Louisville Gas/Kentucky Utilities to adopt the Midwest ISO OATT rate for service under the Agreements and deny East Kentucky the elimination of rate pancaking for use of the Midwest ISO transmission system. If East Kentucky is paying the higher Midwest ISO rate, which presumes a single transmission rate in place of multiple pancaked rates, the Presiding Judge reasoned, it should be entitled to the benefits of the elimination of pancaked rates that it would enjoy as a network customer under the Midwest ISO OATT. Therefore, he found that for transmission service for load served under the Agreements on which the higher Midwest ISO rates are paid, East Kentucky may not also be charged the Midwest ISO Through & Out Rates.

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<sup>13</sup> Order No. 888 at 31,665.

## **2. Louisville Gas/Kentucky Utilities' Brief on Exceptions**

30. Louisville Gas/Kentucky Utilities take exception to the Presiding Judge's holding that because of the manner in which Louisville Gas/Kentucky Utilities proposed to support the proposed rates, which was to use the formula rate under the Midwest ISO OATT, East Kentucky should be able to import energy from the Midwest ISO footprint without paying the Midwest ISO Through & Out Rates. Louisville Gas/Kentucky Utilities argue that the central issue here is whether the rates accurately reflect the cost of providing service under the Agreements and that there is no record evidence that the proposed rates fail to reflect Louisville Gas/Kentucky Utilities' cost of providing service under the Agreements. While elimination of rate pancaking can lead to lower revenue from off-system sales, which, in turn, leads to fewer revenue credits in the transmission cost-of-service, that reduction in revenue credits would be recognized in any transmission cost-of-service performed. Moreover, Louisville Gas/Kentucky Utilities maintain that, if East Kentucky wants to avoid paying Midwest ISO Through & Out Rate charges, Louisville Gas/Kentucky Utilities are willing to serve East Kentucky's contract loads as network customers under the Midwest ISO OATT.

## **3. East Kentucky's Brief Opposing Exceptions**

31. East Kentucky states that the Initial Decision correctly determined that it should not have to pay the Midwest ISO Through & Out Rates for loads on the Louisville Gas/Kentucky Utilities transmission system if the Midwest ISO OATT rate for the Louisville Gas/Kentucky Utilities zone is adopted for the transmission service provided under the Agreements. According to East Kentucky, it pays the Through & Out Rate to move power originating in the Midwest ISO to serve East Kentucky loads in the Louisville Gas/Kentucky Utilities transmission system and, under Louisville Gas/Kentucky Utilities' proposal, also pays the Midwest ISO zonal rate for such transactions. Therefore, East Kentucky asserts that it is paying two separate, pancaked rates to serve its load located on the Louisville Gas/Kentucky Utilities system with resources from the Midwest ISO system, whereas other customers taking service under the Midwest ISO OATT would only pay the Midwest ISO zonal rate for use of the entire Midwest ISO system.

## **4. Commission Determination**

32. We disagree with the Presiding Judge's finding that merely because the proposed service under the Agreements is at the same rate as the Midwest ISO OATT rate for load in the Louisville Gas/Kentucky Utilities' zone, East Kentucky is entitled to service over the entire Midwest ISO system. The issue in this proceeding is the just and reasonable rate for service under the Agreements. While the Presiding Judge is correct that the rate Louisville Gas/Kentucky Utilities proposes to charge here (again, a rate which matches the Midwest ISO OATT rate for load in the Louisville Gas/Kentucky Utilities zone) is

higher than the rate Louisville Gas/Kentucky Utilities would charge if Louisville Gas/Kentucky Utilities did not participate in the Midwest ISO, the appropriate solution is not to expand the scope of service under the Agreements to include access to the entire Midwest ISO system. Rather, the appropriate solution is to adjust the proposed rate, to reflect an allocation of costs to the Agreements assuming that Louisville Gas/Kentucky Utilities did not provide access to its system under the Midwest ISO OATT. However, such an adjustment cannot be made based on the record in this proceeding; indeed, no party even suggested that the proposed rate be adjusted to reflect the nature of the service. Therefore, we will remand the issue to the Presiding Judge and direct the Presiding Judge to conduct further proceedings to address the issue of what adjustment to the proposed rate is necessary.<sup>14</sup>

### **C. East Kentucky's Rates to Louisville Gas/Kentucky Utilities**

#### **1. The Presiding Judge's Findings**

33. The Presiding Judge found that East Kentucky could not change its rates for service to Louisville Gas/Kentucky Utilities unless East Kentucky made a section 205 filing or by offering evidence during the hearing that would satisfy the requirements of section 205 of the FPA. Since East Kentucky did not offer any evidence to support a section 205 filing, the Presiding Judge found that East Kentucky must continue charging Louisville Gas/Kentucky Utilities the rates in the East Kentucky OATT for service above base load amounts.

#### **2. East Kentucky's Brief on Exceptions**

34. East Kentucky argues that, by ordering Louisville Gas/Kentucky Utilities to charge itself the rates provided under East Kentucky's OATT for service it takes from East Kentucky in excess of the base load amounts provided under the Agreements, the Presiding Judge restructured the stated rate design of the Interconnection Agreement. Thus, the Presiding Judge's findings allow Louisville Gas/Kentucky Utilities to alter the amount that East Kentucky charges Louisville Gas/Kentucky Utilities for load served on East Kentucky's system.

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<sup>14</sup> We encourage the parties to make every effort to settle this issue, rather than proceed to additional formal hearing procedures. We note that this issue could be resolved prospectively if East Kentucky accepted Louisville Gas/Kentucky Utilities' offer to allow East Kentucky to serve its contract loads under the Midwest ISO OATT rather than under the Agreements, in which case the rate adjustment would only be at issue for a limited, 'locked-in' period.

35. East Kentucky also argues that the Presiding Judge erred in stating that it did not present adequate evidence to support a change in the rate that it charges Louisville Gas/Kentucky Utilities. Furthermore, in proposing the new rate for charges to Louisville Gas/Kentucky Utilities, East Kentucky is just honoring the historic structure of the Agreements.

### **3. Commission Determination**

36. The Commission disagrees with the Presiding Judge's finding on this issue. East Kentucky is a generation and transmission cooperative that holds RUS debt and, as such, is not a public utility subject to the Commission's jurisdiction under section 205 of the FPA.<sup>15</sup> Thus, the Commission finds that the Presiding Judge erred in finding that East Kentucky can only change the rates it charges for the service it provides under the Interconnection Agreement through a section 205 filing. The Commission has no power to entertain an East Kentucky section 205 filing regarding the rates it charges for the service it provides under the Interconnection Agreement.

#### The Commission orders:

(A) The Initial Decision is hereby affirmed in part and reversed in part, as discussed in the body of this order.

(B) The proceeding is hereby remanded to the Presiding Judge who presided in the earlier hearing and the Presiding Judge shall conduct a further hearing to address the issue of what adjustment to the proposed rates is necessary.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>15</sup> *Midwest Independent Transmission System Operator, Inc.; Public Utilities with Grandfathered Agreements in the MISO Region*, 108 FERC ¶ 63,013 at P. 58 (2004). This finding was originally made by an Administrative Law Judge and later accepted by the Commission in *Midwest Independent Transmission System Operator, Inc.; Public Utilities with Grandfathered Agreements in the MISO Region*, 108 FERC ¶ 61,236 (2004).